IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.37 OF 2007.

Popat Babu Pachpute ...Appellant

Versus

Limbraj Bhikaji Kshirsagar & Ors. ...Respondents

Shri Vilas B. Tapkir for the Appellant.

Shri J.Shekhar for the Respondents.

CORAM : ABHAY S.OKA, J.
DATED : 13th December, 2007.

P.C.:

1. Heard advocate appearing for the appellant. The appellant is the original first defendant. The suit filed by the plaintiffs namely the respondents herein was dismissed by the trial Court. The Appellate Court has passed a decree in favour of the respondents. Operative part of the decree reads thus:

"[3] Perpetual injunction is granted in favour of the plaintiffs and against the defendants and thereby the defendants themselves, through their agents or servants or through anybody are restrained to create new road through the agricultural land of plaintiff Nos.1 and 2, without due process of law".

2. The submission of the advocate for the appellant is that in the written statement the appellant has pleaded existence of a road through the suit property and oral evidence of the witnesses also shows the existence of road passing through the suit property.

3. I have carefully considered the submissions. Apart from the fact that there is no specific pleading in the written statement of the appellant that he is entitled to exercise a particular right of easement, the operative part of the impugned decree shows that injunction has been granted restraining the defendants in the suit from creating a new road through the agricultural land of the original plaintiff Nos.1 and 2 without due process of law.

4. Considering the pleadings of the appellant and considering the nature of the impugned decree, no substantial question of law arises. Second Appeal is accordingly dismissed with no orders as to costs.

JUDGE